IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8134 of 1988

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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PREMIER TYRES LTD

Versus

CHITRABEN RAMANURAGI

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Appearance:

1. Special Civil Application No. 8134 of 1988

MR PC MASTER for MR HB SHAH for the Petitioner

Respondent SERVED

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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 21/10/2004

ORAL JUDGEMENT

In the present petition preferred under Article

227 of the Constitution of India the petitioner, a public limited company, the employer (hereinafter referred to as "the Company"), has challenged the judgment and award dated 13th September, 1988 passed by the learned Presiding Officer, Special Labour Court, Ahmedabad (hereinafter referred to as "the Labour Court") in Reference (LC/ID&T) No.241/1984. By impugned award the Company has been directed to reinstate the respondent workman in service with continuity and to pay the backwages.

The Company had engaged the workman as Trainee Typist Clerk for a period of six months and, on completion of training, as Typist Clerk on probation for six months. The workman joined as Trainee on 1st February, 1980. By order dated 27th December, 1980 the workman was discharged from service on the ground of unsuitability. Feeling aggrieved, the workman raised industrial dispute which came to be referred to the Labour Court and registered as above. Before the Labour Court, the workman claimed that she was a permanent employee of the Company. Termination of her service was punitive and was made without holding enquiry against the workman. The workman, therefore, sought cancellation of the order of termination of service and reinstatement in service with backwages.

The said claim was contested by the Company. According to the Company, after completion of the period of training the workman was employed on probation for six months. During the period of probation she was discharged from service on the ground of unsuitability. She had worked for 11 months and less than 240 days. Nevertheless, she was paid one month's pay in lieu of notice.

The Labour Court was of the opinion that after the completion of the period of training specific order of appointment of the workman on probation was not made. The workman, therefore, had become permanent employee of the Company. Her service came to be terminated on account of unsatisfactory work and irregular attendance. Thus, the order of termination of service was penal in nature. Such order could not have been made without holding domestic enquiry against the workman. The same was, therefore, bad and illegal. The Labour Court was, therefore, pleased to make the award for reinstatement in service and the backwages.

The Company has, on 26th February, 1993, made affidavit to bring further facts on the record. It is

stated that pursuant to the impugned award the workman had been given repeated notices to report for duty. She, however, did not respond to the said notices and did not report for duty.

The Labour Court has categorically noted that the workman was initially engaged as Trainee Typist Clerk. The terms of appointment did stipulate that the workman would be under training for six months and after completion of the period of training, continuance of the workman in service would be on probation for six months. Thus, at the time of termination of her service the workman was on probation. No specific order appointing the workman on probation was required in view of the terms of her initial appointment as Trainee Typist Clerk. During the period of probation if her service were found to be unsatisfactory, the Company had right to terminate the probation and to discharge her from service. The order of termination of service of the workman, therefore, was made in accordance with the terms of appointment. The same cannot be said to be penal; nor the workman was a permanent employee of the Company. Hence, no domestic enquiry was warranted before termination of service of the workman on the ground of unsuitability. The workman, therefore, was not entitled to reinstatement in service and the backwages.

As recorded hereinabove, inspite of the award in her favour and all possible efforts having been made by the Company, the workman has not reported for duty. Before this Court also she has not entered appearance. It is, therefore, apparent that the workman was/is not interested in service.

In view of the above discussion, the petition is allowed. The impugned judgment and award dated 13th September, 1988 passed by the Special Labour Court, Ahmedabad in Reference (LC/ID&T) No.241/1984 is quashed and set-aside. The claim made by the workman stands rejected. Rule is made absolute. The parties shall bear their own cost.

( Ms. R.M.Doshit, J. )

/sakkaf